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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

JUL 21 2003

FILE: LIN 02 094 53115

Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

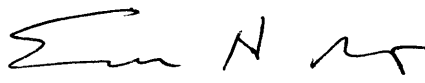
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Nebraska Service Center Director denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted. The AAO decision dated March 12, 2003, will be affirmed.

The petitioner is a horse stable. The beneficiary is a horse trainer and rider. The petitioner seeks O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in athletics in order to employ him in the United States as an "equestrian stable manager/equestrian pro" tasked with providing care and training to horses, hiring and firing instructors, and responsibility for instruction, equipment and all aspects of managing the business, for a period of three years at an annual salary of \$24,000.

The director denied the petition finding that the petitioner failed to establish that the beneficiary qualifies as an alien with extraordinary ability in the arts. The AAO determined that the director applied the wrong criteria to the beneficiary. The director applied the regulatory criteria for an alien in the arts since the petitioner had referred to dressage as an art. The petitioner, however, also noted that dressage is an Olympic sport. The more appropriate standard is that for athletics. The AAO determined that the record was insufficient to establish that the beneficiary is an alien with extraordinary ability in athletics.

On motion, counsel for the petitioner submits a brief and additional documentation.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

8 C.F.R. §214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. §214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of

expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

8 C.F.R. § 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary in this matter is a native and citizen of France. He earned a diploma as a horseback tourism guide from the National Association for Horseback Tourism and Entertainment Horseback Riding. He also earned a diploma as a horseback riding instructor in 1973. In 1988, he started his own riding school called Les Écuries d'Eyguarande. He established polo clubs in Tahiti and on Reunion Island. He performed his equestrian show on two occasions for a TV program aired on French national television.

The director determined that the beneficiary does not meet the eligibility criteria for an alien of extraordinary ability in the arts.

On motion, counsel for the petitioner asserts that the beneficiary is an alien of extraordinary ability who has demonstrated sustained national and international acclaim in dressage, the field of endeavor.

After a careful review of the record, it must be concluded that the petitioner has failed to meet his burden of proof. The record is insufficient to establish that the beneficiary is an alien with extraordinary ability in athletics.

First, there is no evidence that the beneficiary has received any major internationally recognized award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Nor is the record persuasive in demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

For criterion number one, the beneficiary received prizes, his horses won prizes and some of the riders he trained won competitions. According to [REDACTED] the beneficiary won the Gold Medal with his team and the Bronze medal¹ individually, at the National Morocco Jumping Championship in 1988. According to [REDACTED] President of the French Commission for Jumping, the beneficiary "took numerous riders to top winning ranks in Jumping Competitions." [REDACTED] President of the Regional Committee for Equestrian Federation, wrote that the beneficiary was qualified and awarded with his horse in 1990 at the finals of the French Jumping Championship of Fontainebleau. On motion, the petitioner established that these are nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The beneficiary satisfies this criterion.

¹ The petitioner provided the Bureau with a letter from [REDACTED] the President of the Morocco Royal Society for Equestrian Sports stating that the beneficiary won the Bronze medal in 1987 in the Cup of Morocco tournament, Category B.

For criterion number two, while the beneficiary is a member of the Utah Polo Club, there is no evidence that this association requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines. The beneficiary does not satisfy this criterion.

The petitioner provided one news article about the beneficiary and his wife and their riding abilities that was published in the *Salt Lake Tribune* on October 13, 2002. The petitioner also provided the Bureau with a letter from a television production manager that states that on two occasions, on August 5, 1999 and on August 7, 2000, the beneficiary performed his equestrian show for a national television program. The petitioner has failed to demonstrate that the beneficiary has sustained acclaim through extensive documentation.

The petitioner provided the Bureau with two testimonials that state that the beneficiary has served as a dressage judge. One person wrote that the beneficiary was a judge on the dressage competition field at a dozen locations in France in the years 1997, 1998, 1999 and 2000. The beneficiary satisfies this criterion.

On motion, counsel for the petitioner submits advisory opinions that were previously submitted to the Bureau as evidence that the beneficiary satisfies criterion number five. The advisory opinions speak well of the beneficiary, but fail to document that the beneficiary has made an original scientific, scholarly, or business-related contribution of major significance in the field as required by the regulation.

No evidence was provided in relation to criterion number six.

For criterion number seven, the petitioner submits that the beneficiary performed a critical role for the Registered Agency of Experts on Equine Matters by evaluating dressage horses for insurance purposes. The petitioner provided testimonials including one from [REDACTED] at Galand Stables, asserting that the beneficiary performed a critical role for [REDACTED] by training internationally acclaimed horses that won impressive victories in elite competitions worldwide. [REDACTED] of Diamant Stables, the petitioner, asserts that the beneficiary will play a critical role for the petitioner by developing a polo program in Utah. The petitioner has failed to establish that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

No evidence was provided in relation to criterion number eight.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The AAO decision dated March 12, 2003 is affirmed.